

On January 26, 2004 appellant, then a 46-year-old letter carrier, filed an occupational disease claim alleging a neck and upper extremity injury due to years of casing mail and carrying a mailbag. He first became aware of his condition on July 10, 2002. On March 7, 2006 the Office accepted appellant's claim for a displaced cervical intervertebral disc under OWCP File

No. xxxxxx570.¹ Appellant subsequently filed a claim for a schedule award based on his cervical spine condition.²

In a January 20, 2004 report, Dr. Pocekay diagnosed cervical spine degenerative disc disease with residual neck pain and left C-6 radiculopathy. He noted that appellant was status post right shoulder labral repair without ratable residuals. Dr. Pocekay described appellant's left upper extremity condition.³ He stated that appellant's cervical spine and upper extremity conditions had reached maximum medical improvement as of December 10, 2003.

By decision dated March 9, 2007, the Office denied appellant's claim for a schedule award causally related to his July 10, 2002 cervical condition.

On March 13, 2007 Dr. Ellen L. Pichey, a Board-certified family practitioner specializing in occupational medicine and an Office medical consultant, reviewed the January 20, 2004 report of Dr. Pocekay.⁴ Based on the A.M.A., *Guide* (fifth edition), she found that appellant had no ratable impairment of either his right or left upper extremities based on his accepted cervical condition.⁵

Appellant requested reconsideration of the March 9, 2007 decision. In a November 16, 2007 report, Dr. Pocekay reviewed the medical history and course of treatment and provided findings on physical examination. He noted that it was difficult to initially determine whether appellant's symptoms arose from the neck or from intrinsic shoulder disease, however, it became clear that the largest portion of the problem was radicular. Overall, appellant felt that he had very slowly improved and was less bothered by work activities. Dr. Pocekay stated that appellant had mild chronic aching at the base of his neck with occasional associated pressure in his left upper extremity. There was no atrophy or asymmetry involving appellant's neck or upper extremities. There was scattered tenderness to deep palpation of both upper extremities.

¹ The Office initially denied appellant's claim. In an April 28, 2005 report, Dr. Dennis E. Pocekay a Board-certified internist specializing in occupational medicine, diagnosed cervical degenerative disc disease with C-6 radiculopathy. A March 7, 2006 Office decision found that the medical evidence established that appellant had a herniated disc at C-6.

² Appellant has a separate claim accepted for right shoulder impingement syndrome sustained on October 26, 1999 and related arthroscopic surgery under OWCP File No. xxxxxx089. He received a schedule award for 16 percent impairment of the right upper extremity. Under OWCP File No. xxxxxx256 the Office accepted appellant's claim for a left hand sprain and granted a schedule award for six percent impairment.

³ As noted, appellant's left upper extremity condition is the subject of a separate claim under OWCP File No. xxxxxx256.

⁴ See Federal (FECA) Procedural Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6(d) (August 2002) (these procedures contemplate that, after obtaining all necessary medical evidence, the file should be routed to an Office medical adviser for an opinion concerning the nature and percentage of impairment in accordance with the American Medical Association, *Guides to the Evaluation of Permanent Impairment*, with the medical adviser providing rationale for the percentage of impairment specified, especially when there is more than one evaluation of the impairment present).

⁵ Dr. Pichey indicated that appellant had an additional five percent impairment of his left upper extremity causally related to his separate accepted left hand sprain in OWCP File No. xxxxxx256.

Sensation was essentially normal in both upper extremities with the exception of mild sensory loss in his left thumb. Manual muscle testing was full. Dr. Pocekay rated five percent impairment of the left upper extremity for a mild loss of cervical range of motion and left C-6 radiculopathy based on Table 15-5 at page 392 of Chapter 15 (The Spine) of the A.M.A., *Guides*. He indicated that appellant had reached maximum medical improvement on December 10, 2003.

By decision dated March 3, 2008, the Office affirmed the March 9, 2007 decision.⁶

LEGAL PRECEDENT

Section 8107 of the Federal Employees' Compensation Act⁷ authorizes the payment of schedule awards for the loss or loss of use of specified members, organs or functions of the body. Such loss or loss of use is known as permanent impairment. The Office evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁸ There is no provision for a schedule award for the back or neck under the Act. No schedule award is payable for a member, function or organ of the body not specified under the Act or the implementing regulations.⁹ Neither the Act nor the regulations provide for a schedule award for loss of use of the back or to the body as a whole.¹⁰ However, the schedule award provisions of the Act include the extremities and a claimant may be entitled to a schedule award for permanent impairment to an extremity even though the cause of such impairment originates in the spine.¹¹

ANALYSIS

Appellant received schedule awards for his right and left upper extremity under separate claims. The case on appeal involves his schedule award claim based on his accepted cervical spine condition. The Office found that the medical evidence did not establish that his diagnosed cervical disc disease caused a ratable impairment of his upper extremities.

In this case, Dr. Pocekay found that appellant had five percent impairment of his left upper extremity for a mild loss of cervical range of motion and left C-6 radiculopathy based on Table 15-5 at page 392 of Chapter 15 (The Spine) of the A.M.A., *Guides*. As noted, the Act does not provide for a schedule award based on impairment to the spine. Dr. Pocekay did not rate impairment based on the relevant chapter pertaining to the upper extremities. Dr. Pocekay indicated that appellant's condition reached maximum medical improvement as of

⁶ Subsequent to the March 3, 2008 Office decision, appellant submitted additional evidence. The Board's jurisdiction is limited to the evidence that was before the Office at the time it issued its final decision. *See* 20 C.F.R. § 501.2(c). The Board may not consider this evidence for the first time on appeal.

⁷ 5 U.S.C. § 8107.

⁸ 20 C.F.R. § 10.404. Effective February 1, 2001, the Office began using the A.M.A., *Guides* (5th ed. 2001).

⁹ *See J.Q.*, 59 ECAB __ (Docket No. 06-2152, issued March 5, 2008).

¹⁰ *See Guiseppe Aversa*, 55 ECAB 164 (2003).

¹¹ *See J.Q.*, *supra* note 10; *Vanessa Young*, 55 ECAB 575 (2004).

December 10, 2003. However, his report does not establish any greater impairment to the arms since his examination on that date. Therefore, his report does not establish appellant's entitlement to a schedule award based on his accepted cervical spine condition.

CONCLUSION

The Board finds that appellant has not established any impairment of his right or left upper extremity causally related to his accepted cervical spine condition.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated March 3, 2008 is affirmed.

Issued: November 24, 2008
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board